

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of) **MAIL STOP APPEAL BRIEF-PATENTS**
Anders Stenberg)
Application No.: 09/879,151) Group Art Unit: 3761
Filed: June 13, 2001) Examiner: Catharine L. Anderson
For: ABSORBENT ARTICLE) Confirmation No.: 4114
)

REPLY BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Examiner's Answer dated 17 March 2010, appellant replies as follows:

Claims 1, 2, 5-11, 19-25 and 46-47

In the Examiner's Answer, the Examiner asserts that "the indicia of Cammarota can be used to indicate the absorbent capacity of the article." Examiner's Answer, page 5. Appellant traverses this assertion.

The Examiner's justification for the assertion that the indicia of Cammarota can be used to indicate the absorbent capacity of the article is the following:

The color of the strip part 30, when it changes color to indicate wetness, provides an indication of the absorbent capacity of the article by showing that the article is capable of absorbing liquid.

Examiner's Answer, page 3 (see also, Examiner's Answer, page 5).

The Examiner's justification is based upon an unreasonably broad construction of "indicia that provides an indication of absorption capacity." Appellant traverses the Examiner's construction.

Appellant recognizes that during examination, the claims must be interpreted as broadly as their terms ***reasonably*** allow. In re American Academy of Science Tech Center, 367 F.3d 1359 (Fed. Cir. 2004). However, any such interpretation must be "consistent with the specification, . . . and that claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art." In re Bond, 910 F.2d 831, 833 (Fed. Cir. 1990).

The Examiner's construction here, though certain broad, is unreasonably broad. The broadest-construction rubric coupled with the term "comprising" does not give the Examiner an unfettered license to interpret claims to embrace anything remotely related to the claimed invention. In re Suitco Surface, Inc., No. 2009-1418, slip op. at 8 (Fed. Cir. Apr. 14, 2010).

First, appellant highlights to the Board that the independent claims 1 and 2 are each directed to an "absorbent article" that comprises "an absorbent body." Accordingly, one skilled in the art would interpret the claimed invention of independent claims 1 and 2 to be directed to an article that is capable of absorbing liquid. The Examiner's unreasonable claim construction construes the recitation of an "indicia that provides an indication of absorption capacity" to include an indicia that shows the article is capable of absorbing liquid.

However, since the claimed invention is already directed to an article that is capable of absorbing liquid, the Examiner's construction renders the indicia's indication meaningless. One skilled in the art already knows that the article can absorb liquid. Indicia for such is unnecessary for an absorbent article.

Moreover, the present specification indicates that the indicia is used to distinguish absorbent articles from similar absorbent article. See, e.g., Specification,

page 6, lines 6-12¹. Thus, a construction of "indicia that provides an indication of absorption capacity" that is read in light of the specification as it would be interpreted by one of ordinary skill in the art is a construction that the indicia would effect a difference in the degree of absorbent capacity; not a construction of a binary situation of absorbent or not absorbent.

Accordingly, the Examiner's construction of an "indicia that provides an indication of absorption capacity" is unreasonably broad and wrong.

There is not teaching in Cammarota of an indicia that provides an indication of absorption capacity that is different from an absorbent capacity of another absorbent article. Accordingly, Cammarota does not anticipate claims 1, 2, 5-11, 19-25 and 46-47.

Further, with regard to the Examiner's interpretation, the Examiner relies on the color of the strip, ***after the wetness indicator has changed color***, to be the claimed indicia of an indication of absorbent capacity.

However, the claimed invention recites that the strip has a color that is able to facilitate the identification of the location of the wetness indicator. That same color ("wherein the color of the strip part") is recited to also provide an indication of size or absorption capacity. However, the Examiner has not provided a teaching that the

¹ "Moreover the colour, tint or other appearance of the strip 10, may be an indicator of the product type, size, absorption capacity or the like. On or adjacent the strip 10 there can be further arranged symbols 11, codes or the like, which indicate the product type, size, absorption capacity or the like. By this it is easier for the nurse to find the correct type of product in the case where the articles have been taken out of their packages and placed on a shelf or the like in a storage space in a nursing home or the like." Specification, page 6, lines 6-12.

color, the color that facilitates the identification of the location of the wetness indicator, is able to provide an indication of the absorbent capacity. Instead, the Examiner asserts that a different color, the color of the strip after the wetness indicator has changed color, is the claimed indicia of an indication of absorbent capacity.

The Examiner's application of Cammarota to the claimed invention is flawed for at least this reason. Cammarota does not anticipate the claimed invention. Cammarota does not teach that a color that is able to facilitate the identification of the location of the wetness indicator and provide an indication of size or absorption capacity. Even with the Examiner's unreasonably broad interpretation, the Examiner cites to one color to facilitate identification and a second, different color to provide an indication. This is not the claimed invention.

The Board is respectfully requested to withdraw the rejection of claims 1, 2, 5-11, 19-25 and 46-47 as being anticipated by Cammarota.

Claims 44 and 45

The arguments, *supra*, regarding the Examiner's assertion that the indicia of Cammarota can be used to indicate the absorbent capacity of the article are incorporated herein.

Further, with regard to claims 44 and 45, the Examiner asserts that:

It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the absorbent articles of Cammarota in a package including a plurality of articles of at least two different sizes or types, as taught by Miller, to provide the user with a choice of products.

Examiner's Answer, page 4.

That is it. That is the Examiner's reasoning for why the combination of Cammarota with Miller would render the claimed invention unpatentable. However, the Examiner has ignored that the asserted modification is not the claimed invention.

The modification presented by the Examiner is a package that has absorbent articles of different sizes. However, the strip of each absorbent article is identical. The strip cannot be used to distinguish an article of one size/absorption capacity for an article of a different size/absorption.

As discussed above, the claimed invention must be read in light of the specification as it would be interpreted by one of ordinary skill in the art. In re Bond, 910 F.2d 831, 833 (Fed. Cir. 1990).

Further, as discussed above, the specification details that the claimed invention provide a way to "find the correct type of product in the case where the articles have been taken out of their packages and placed on a shelf or the like in a storage space in a nursing home or the like." Specification, page 6, lines 10-12.

Thus, the claimed invention of, for example, claim 45 is one of an assortment of products comprising a plurality of absorbent articles of at least two different sizes or absorption capacities. This same assortment also has different color strips to provide an indication of the difference in the size or absorption capacity of the article.

However, the modification presented by the Examiner is a package that has absorbent articles, each having the same strip indicia.

Accordingly, the combination of Cammarota and Miller does not render claims 44 and 45 unpatentable. The Board is respectfully requested to withdraw the rejection of claims 44 and 45 as being rendered obvious by Cammarota in view of Miller.

Respectfully submitted,

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